

### **REMARKS**

The Office Action of January 27, 2009, has been carefully reviewed and these remarks are responsive thereto. Claims 2, 8, 9, 14, and 18-20 were previously canceled. Claims 11-13 have been canceled in the present paper. Claims 21-24 have been added in the present paper. No new matter has been added. Claims 1, 3-7, 10, 15-17, and 21-24 are presented for examination upon entry of the present paper. Reconsideration and allowance of the instant application are respectfully requested.

#### **Claim Rejections Under 35 U.S.C. § 103**

Claims 1, 3-7, 10, and 15-17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. pat. no. 5,223,924 to Strubbe ("Strubbe '924") (incorporating by reference U.S. pat. no. 5,047,867 to Strubbe et al. ("Strubbe '867")) in view of U.S. pat. no. 5,410,326 to Goldstein ("Goldstein"). This rejection is traversed below.

Amended independent claim 1 recites, among other features, "means for *passively* identifying frequently-watched programs most often watched by said subscriber based upon said stored information and tracking a number of times said subscriber watches a program." Illustrative, non-limiting written description support for the amended features is provided in the originally filed specification when read as a whole, and, for example, at page 4, lines 13-15.

Strubbe '924 fails to disclose the above-noted features recited in claim 1 related to passively identifying frequently-watched programs most often watched by a subscriber based upon stored information and tracking a number of times the subscriber watches a program. In fact, Strubbe '924 teaches away from such features. More specifically, even assuming (without admitting) that the identification of a television program as "liked" as described in Strubbe '924 can appropriately be analogized to identifying frequently-watched programs, Strubbe '924 requires a user to explicitly identify a desire to partake in the "like"/"dislike" recording program. See Strubbe '924 at col. 5, lines 26-32 (providing that " . . . *at the option of the viewer*, merely watching and/or recording a television program for long than a given amount of time (for example, at least 15

minutes), would automatically register as a “like” response . . .”) (emphasis added). As such, Strubbe ‘924 fails to describe features related to passively identifying frequently-watched programs most often watched by a subscriber based upon stored information and tracking a number of times the subscriber watches a program as recited in amended claim 1.

Goldstein fails to remedy the deficiencies of Strubbe ‘924 described above with respect to claim 1. In fact, Goldstein is deficient for substantially similar reasons. See Goldstein at col. 26, lines 49-58 (providing that at the time a user is operating a remote control device, the user is asked if he would like to make (the channel) a favored channel).

Thus, notwithstanding whether a combination of Strubbe ‘924 and Goldstein is proper, the combination fails to result in at least the above-noted features recited in claim 1. As such, claim 1 is allowable for at least the foregoing reasons.

Amended independent claims 7 and 16 recite features similar to those described above with respect to claim 1. As such, claims 7 and 16 are allowable for at least reasons substantially similar to those described above with respect to claim 1.

The dependent claims are allowable for at least the same reasons as their respective base claims, and are also further allowable in view of the unique limitations recited in each respective dependent claim.

#### **New Claim(s)**

Claim 21 is directed to an apparatus comprising a processor and memory storing instructions that, when executed by the processor, cause the apparatus to perform steps similar to features recited in claim 1. As such, claim 21 is allowable for at least similar reasons as claim 1. Illustrative, non-limiting written description support for the processor and memory storing instructions recited in claim 21 can be found in the filed specification when read as a whole, and for example, at page 6, lines 1-7; page 13, lines 11-14; page 31, lines 1-4 and Fig. 7a.

Claim 22 is allowable for at least the same reasons as claim 21 and further in view of claim 22’s unique limitations. Illustrative, non-limiting written description support for the features recited in claim 22 can be found in the filed specification when read as a

whole, and for example, at page 4, line 21 through page 5, line 6; page 16, lines 8-14; and page 17, line 15 through page 18, line 25.

Claim 23 is directed to a method and recites features similar to those recited in claim 1. Claim 23 is allowable for at least similar reasons as those described above with respect to claim 1.

Claim 24 is allowable for at least the same reasons as claim 23 and further in view of the unique limitations recited in claim 24.

### **CONCLUSION**

All rejections having been addressed, Applicants respectfully submit that the instant application is in condition for allowance, and respectfully solicit prompt notification of the same.

Respectfully submitted,

BANNER & WITCOFF, LTD.

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By:           /Bradley C. Wright/            
Bradley C. Wright, Reg. No, 38,061  
1100 13<sup>th</sup> Street, N.W.  
Suite 1200  
Washington, D.C. 20005-4051  
Tel: (202) 824-3000  
Fax: (202) 824-3001